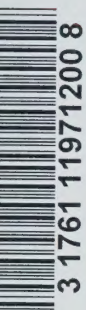


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Gun control legislation
in Canada, the U.K. and U.S.

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GUN CONTROL LEGISLATION IN CANADA, THE UNITED KINGDOM AND THE UNITED STATES

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Law and Government Division

February 1990



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INTRODUCTION

The attempt to regulate the possession, sale and use of firearms by legislative means has proven to be a highly contentious issue in a number of countries. Although perhaps not charged with the same intensity as the American historical experience, both recent and distant, the debate in Canada on this important topic has been vigorous.

Extensive controls were adopted in Canada in 1977, and critics are now calling for even more restrictions. Various proposals for extended control in the United States are now at different stages of the legislative process.

This study will summarize and provide some analysis of the gun control laws of selected countries. The laws of Canada, the United Kingdom, and the United States will be examined in some detail, and where appropriate the provisions in the other countries will be contrasted with those in force in Canada. Information and analysis which may be of particular interest appears in bold type throughout the text.

GUN CONTROL LEGISLATION IN SELECTED COUNTRIES

A. Canada

The current Canadian gun-control legislation was enacted by the Criminal Law Amendment Act, 1977.⁽¹⁾ The Act extensively amended the

(1) S.C. 1976-77, c. 53, assented to on 5 August 1977. Most of the provisions came into force on 1 January 1978, and others were proclaimed a year later, while at least one remains to be proclaimed.

Canadian Criminal Code⁽¹⁾ provisions relating to firearms and other weapons. Prior to the amendments, the Criminal Code specified three categories of "prohibited weapons": (i) muzzle silencers; (ii) switch blades; and (iii) a weapon declared by the cabinet to be prohibited, not being an antique firearm or of a kind commonly used in this country for hunting or sporting purposes. The current law includes these three classes⁽²⁾ as well as automatic weapons⁽³⁾ and "sawed-off" shotguns and rifles.⁽⁴⁾ The possession of a prohibited weapon is a serious offence with a possible penalty of up to five years in prison.⁽⁵⁾ The same punishment is provided for anyone who imports, sells, transfers or delivers such a weapon.⁽⁶⁾

The second category of weapons set out in the Criminal Code involves "restricted weapons". Included in this designation are: (i) handguns (pistols); (ii) short barrel (less than 470 mm) semi-automatic weapons; (iii) folding or telescoping firearms capable of being reduced to 457 mm or less in length; (v) automatic firearms that had been registered as restricted weapons before 1 January 1978, and formed part of the gun collection of a genuine collector; and (vi) any other weapon not reasonably usable for hunting or sport, in the opinion of cabinet, that is declared by order of the cabinet to be a restricted weapon.⁽⁷⁾

(1) Ss. 84 to 117, R.S.C. 1985, c. C-42, Part III, "Firearms and Other Offensive Weapons".

(2) S. 84(1), definition of "prohibited weapon".

(3) Defined as a weapon "... capable of firing bullets in rapid succession during one pressure of the trigger".

(4) Defined as having a barrel less than 457 mm (18.28 in.) long, or being less than 660 mm (26.4 in.) in overall length.

(5) S. 90(1); the Crown has the option of proceeding by way of indictment or summary conviction. By Order in Council (P.C. 1978-2955, 27 September 1978, registered as SI/78-176) a "national firearms amnesty month" was proclaimed. During the month of November, 1978, penalties for the possession or transportation of prohibited weapons were suspended, provided such weapons were surrendered to the police. Similar immunity was granted to anyone presenting an unregistered restricted firearm for registration or disposal.

(6) S. 95, also same Crown option.

(7) See definition in s. 84(1).

Thus, fully automatic firearms are now designated as prohibited rather than merely restricted firearms, and "sawed-off" rifles and shotguns were also made prohibited. Automatic weapons in the hands of gun collectors were "grandfathered", and semi-automatics with short barrels were added to the definition of restricted weapons.

Prohibited weapons may be possessed only by the police or military. Other Canadians may possess restricted firearms, but only if they hold a "registration certificate". These certificates are issued only for certain specified purposes. Possession of a restricted weapon without a valid registration certificate, or at any place other than the place specified on the certificate, renders a person liable to up to five years in prison.⁽¹⁾ The same punishment is provided for transferring, in any form, a restricted firearm to a person not holding the required certificate,⁽²⁾ or for importing such a weapon without a certificate.⁽³⁾

The registration certificate may be obtained upon application to the "local registrar of firearms."⁽⁴⁾ A certificate may be issued if the applicant is eighteen years of age or over and the gun⁽⁵⁾ is: required for the protection of life, for use in a lawful occupation, or for use in target practice under the auspices of an approved shooting club or pursuant to specified conditions; or if the weapon will form part of a gun collection or is a "relic".⁽⁶⁾ There are also additional provisions for

(1) S. 91(1) and (2). The Crown may proceed by way of indictment or summary conviction. The Code also provides for a minimum one-year and a maximum fourteen-year jail term for anyone using a gun during the commission of an offence (s. 85(1)), as well as up to five years for pointing a firearm or two years (5 years for second offences) for careless use.

(2) S. 96(1).

(3) S. 96(3).

(4) Defined as a person so designated by the R.C.M.P. Commissioner or the Attorney General, or a member of a designated class of police officers (S. 84(1) and (3)).

(5) The weapon must bear a distinguishing serial number, or be accurately described in the case of an antique firearm.

(6) S. 109(3).

permits to carry, transport or convey⁽¹⁾ restricted weapons. In addition, there are permit provisions allowing persons under 16 years of age who are engaged in hunting and trapping as a way of life, and allowing those between 12 and 16 years of age for other purposes,⁽²⁾ to possess firearms that are not restricted. Furthermore, anyone carrying on the business of manufacturing or dealing in restricted weapons requires a permit.⁽³⁾ The Code also contains enforcement provisions with penalties of up to two years imprisonment for making false statements to obtain a restricted weapon or firearms acquisition certificate (described below), for failure to comply with conditions, and for unlawfully altering the document.⁽⁴⁾

The Criminal Code also requires that a "firearms acquisition certificate" (FAC) be obtained by a prospective purchaser, and both parties to a firearms transaction may be held accountable if a certificate has not been issued. Such a certificate must be produced by the person seeking to acquire the weapon when a firearm is sold or transferred in any form, failing which the transferring party is liable to a two-year prison term upon conviction.⁽⁵⁾ The same penalty is provided for anyone who acquires or imports a weapon without a valid certificate.⁽⁶⁾

An application to obtain a certificate is made to a firearms officer.⁽⁷⁾ The certificate may not be issued to persons less than 16 years of age, or to persons who may not possess firearms pursuant to a probation order, or where there has been a successful application to a

(1) Ss. 110(1), (3) and (4).

(2) Ss. 110(6) and (7).

(3) S. 105. In addition to obtaining the required business permit, the firearms merchant is legally obligated to keep an inventory record of his stock and report any loss or theft, and to take due care in the handling, storage and transportation of arms and ammunition. Non-compliance can result in a jail sentence.

(4) S. 113.

(5) S. 97(1). Certain exemptions, primarily involving the lending of firearms under certain circumstances, are found in ss. 97(2) and (4).

(6) S. 97(3).

(7) S. 106(1). There is a fee for an F.A.C.

magistrate by the Attorney General (or on his behalf) that a person from whom firearms have been seized not be allowed to possess them for safety reasons.⁽¹⁾ The permit will also not be issued where the applicant is the subject of a mandatory court order prohibiting him from having guns, ammunition or explosives by reason of his having used a firearm in the commission of an indictable offence or while fleeing from the scene of such an offence,⁽²⁾ or where the person has been convicted of an indictable offence where violence has been used, threatened or attempted.⁽³⁾

Section 104(2)(c) also requires the applicant for a firearms acquisition certificate to provide evidence that he or she has passed a test on the safe handling and use of firearms, or has at least completed a safety course. The original gun control legislation provided, however, that this requirement would be proclaimed in force province-by-province. This would require the co-operation of the provinces, and to date the section is not in force in any province. Provincial Firearms Officers cite an inadequate availability of appropriate certificate courses in gun handling, and a lack of resources to deal with the administrative problems that enforcing the requirement would involve. Action has been promised by the federal government to gain provincial agreement and have this provision put into effect.

The issuance of a firearms acquisition certificate is subject to certain powers vested in firearms officers. They can refuse to issue one if they have information that indicates that it would not be desirable in the interests of the safety of the applicant or any other

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- (1) S. 106(2). A warrant for seizure may be obtained pursuant to section 103(1). A police officer may also seize weapons without a warrant, when necessary in the interests of safety, if an application for a warrant is impracticable. (s. 103(2)). Section 103(4) then provides for a hearing where all relevant evidence may be presented. There are also appeal provisions (s. 103(8)).
 - (2) S. 106(2)(b). See also ss. 100(1) and 85.
 - (3) See s. 100(1). The order is for at least 5 years after a first offence and 10 years after a subsequent offence, and runs from the offender's release from imprisonment if a jail sentence has been imposed.

person;⁽¹⁾ but if they have no such information the certificate must be issued to anyone who qualifies. In practice, the power of refusal is rarely exercised except in the face of evidence of such matters as criminal records. They are required by the Code to refuse a certificate if the applicant has a criminal record for offences within the previous five years involving violence, a similar record of treatment for mental disorder associated with violence, or any other history of violent behaviour.⁽²⁾

Although there has been much concern expressed about those with evidence of mental disorder obtaining firearms, there is no central registry system through which psychiatric histories can be checked, as is the case with criminal records. Indeed, the records of such treatment are protected by principles of physician - patient confidentiality. There is thus relatively little that firearms officers can do to see if an applicant does have such a history. As part of the checks on criminal records, officers may consult with local police, who may have information about such treatment if they have been involved in investigating the behaviour that led to it. There has been some discussion at Chief Provincial Firearms Officers conferences of a requirement that applicants for firearms acquisition certificates sign a waiver allowing for disclosure of such information.

Psychological testing on a small scale was apparently used by a few police forces in the early days of the current gun control legislation to determine the suitability of an applicant to be granted a firearms acquisition certificate or a restricted weapon registration certificate. However, considerable controversy arose over the use of such types of questions by the London, Ontario police. The Ontario Attorney General, and the Department of the Solicitor-General for Canada, apparently indicated that they did not believe that the force had the authority to administer the psychological questionnaire to all applicants.⁽³⁾ No such questioning is apparently in use today. It is not clear whether the

(1) See s. 106(1).

(2) See s. 106(4).

(3) See James Jefferson, "Firearms applicants in London still are given psychological quiz", The Globe and Mail, Toronto, 19 September 1979.

Code would permit police forces to require that the applicant submit to such testing, although section 106(9) authorizes the firearms officer to require the applicant to furnish "such further information ... as may reasonably be regarded as relevant" (emphasis added).

There is also a curious provision⁽¹⁾ that forbids firearms officers from requiring certain information from applicants for a certificate. They may not ask the applicant about details concerning the makes or serial numbers of shotguns or rifles that are commonly used for hunting or sporting purposes (presumably in the applicant's possession or about to be acquired). The purpose would appear to be to prevent the police from using the acquisition certificate process to gather information about gun possession - information that is not otherwise available because sporting guns are not required to be registered. It is surprising to find this sort of ban on the police acquiring information concerning firearms possession being imposed in Canada. Similar, and more extensive, provisions of this sort are characteristic of American gun control legislation. The American provisions reflect great deference to the concerns of gun-owners that the state has an unjustifiable desire to interfere with their possession of sporting firearms, and thus should know as little as possible about who owns what guns. The Canadian provision would likewise appear to be a concession to the gun lobby.

Section 107 of the Code authorizes the federal cabinet, upon application of the Attorney General of a province, to declare by order that a hunting licence or permit issued by the province shall be regarded as a valid firearms acquisition certificate. This section has not been invoked by any province. Section 108 provides for federal-provincial agreements by which the administration of those articles of the Code dealing with acquisition and restricted weapons certificates would be coordinated with provincial laws and programs relating to hunting and firearms safety training. No such agreements have been concluded, and instead section 111, which provides for agreements through which the federal government would reimburse the provinces for the costs of issuing certificates and permits, has determined the matter of federal-provincial coordination. An agreement

(1) See s. 106(10).

covering all provinces is in place, and the provinces administer the gun control system in general.

A registration certificate for a restricted weapon may be revoked by the Commissioner, and a permit (such as a permit to carry) by anyone authorized to issue them. The issuance of a registration certificate or permit may be refused in the interests of the safety of the applicant or any other person. A person who feels aggrieved by such a revocation or refusal may appeal to a magistrate for relief, following which either party may then appeal.⁽¹⁾

The legislation grants police officers considerable powers of search and seizure where weapons are involved. For example, section 101 gives a police officer the authority to search without warrant a person, vehicle or premises, other than a dwelling-house, if he believes on reasonable grounds that an offence relating to prohibited or restricted weapons or ammunition has been or is being committed. He also has the right to seize any prohibited weapon, or any restricted weapon for which the person in possession does not produce a registration certificate.⁽²⁾ Even where the possession is lawful, there are the provisions of section 103⁽³⁾ which apply to all weapons and ammunition and which allow a magistrate to issue a warrant of search and seizure, upon application of the Attorney General, where continued possession of the weapon in question is undesirable for safety reasons.

There are a number of "saving provisions" applicable to particular circumstances where it was clearly not intended that criminal liability should attach. For example, section 90(3) of the Code exempts from prosecution persons who come into possession of a prohibited weapon by operation of law (i.e. a judicial sale, etc.), with the proviso that the person lawfully dispose of the prohibited object "... with reasonable despatch". Similarly, the provision that makes it an offence to give a firearm to a person under the age of sixteen without that person having

(1) See s. 112(1), to (3), (8) et seq., and (13).

(2) S. 102(1). The owner can reclaim his weapon within 14 days by producing the requisite registration certificate.

(3) See p. 5, note (1).

a permit for it is subject to an exception for use of the gun by the minor under the immediate supervision of the gun's adult owner.⁽¹⁾

Members of the Canadian Forces (or members of the armed forces of another state lawfully present in Canada), police officers, immigration officers and customs officials are specifically permitted to possess prohibited and restricted weapons in the course of their employment. Persons who import, manufacture, repair, modify or sell firearms under the authority of, or on behalf of, the Canadian Armed Forces or a police force are similarly protected. In addition, there is an exemption for operators of or persons employed in an approved museum who have in their possession restricted or prohibited weapons for the purpose of exhibition.⁽²⁾ Weapons such as antique firearms (unless they are in the restricted category and the owners intend to fire them), signal guns, animal tranquillizing guns and any barrelled weapon with a muzzle velocity of less than 152.4m (500 feet) per second are deemed not to be firearms.⁽³⁾

B. The United Kingdom

The United Kingdom has a long history of firearms control, with the licensing of such weapons starting in 1870. In the modern era, a Firearms Act was passed in 1937, consolidating various earlier arms control statutes. The law was further amended by the Firearms Act, 1965, and a new Act consolidating and amending these acts was passed in 1968. The Firearms Act 1968⁽⁴⁾ is wide in scope, and although similar to Canada's legislation in some ways, it is somewhat more stringent as regards firearms, although the Canadian provisions cover other weapons such as switchblades and martial arts weapons. The salient provisions of this comprehensive piece of legislation are examined below.

(1) Ss. 93(1) and (2).

(2) S. 92.

(3) S. 84(2).

(4) 1968, c. 27; "An Act to Consolidate the Firearms Acts 1937 and 1965, the Air Guns and Shot Guns, etc. Act 1962, Part V of the Criminal Justice Act 1967 and certain enactments amending the Firearms Act 1937".

Under the Firearms Act, anyone in England, Wales or Scotland who has in his possession or wishes to acquire a firearm or ammunition must have a firearm certificate obtained from the local police (no certificate is required in Canada to possess a firearm that was acquired before the new gun control provisions came into effect). Shotguns and low-powered air guns are exempt from this requirement, but there are separate provisions requiring a certificate to possess or acquire a shotgun.

It is to be noted that the British have no comparable provisions to those in the Canadian legislation that classify certain firearms as "restricted", requiring a special registration certificate, and that permit people to carry such restricted weapons as handguns on their person in certain circumstances. This would appear to reflect a more restrictive regime in general, under which permission to possess such weapons would rarely be given.

British firearms certificates relate to specific weapons, and the police must be satisfied, among other things, that the applicant for a rifle or pistol certificate has a good reason for having each weapon - for example, target shooting or sporting purposes. Personal protection is not regarded as a valid reason for having a firearm.

Gun dealers are regulated and those who manufacture, sell, transfer or repair firearms or ammunition must be registered as firearms dealers. It is an offence to transfer or sell to any person, other than a registered firearms dealer, any firearm or ammunition, including a shotgun, unless that person produces a valid firearms or shotgun certificate. It is of course an offence to produce a false certificate or permit.

As in Canada, certain weapons are generally prohibited. Until the Act was recently amended, these included only automatic weapons, any weapon designed to discharge noxious liquids or gases, and ammunition containing such noxious substances. The prohibition is subject to an exemption for those authorized by the Secretary of State (formerly by the Defence Council) to possess these weapons. Private individuals will normally not be given such permission. Silencers and sawed-off rifles and shotguns are not dealt with (although it is an offence to shorten the barrel of a shotgun to less than 24 inches).

There are special exemptions allowing certain people to possess weapons without having obtained a certificate. These include, in authorized circumstances: those with police permits; registered firearms dealers; auctioneers; persons licensed to slaughter animals; those using firearms for sports, target-shooting, athletic, and other activities such as cadet corps; persons taking part in theatrical performances; those using weapons for signalling purposes on ships or aircraft; and persons temporarily in Great Britain who wish to obtain shotguns. As well, persons in the service of Her Majesty, including police officers, may, when duly authorized in writing, acquire firearms for the public service without a certificate. People in the military, although excused from payment of any licensing fee, still require a firearm certificate to acquire guns for private use.

To obtain a certificate the applicant must apply, in prescribed form, to the "chief officer of police" for the area in which he or she resides. Proper identification is required in all instances. A certificate can be refused or revoked, in which case the person aggrieved may appeal against the refusal to the Court of Quarter Sessions. Certificates may be refused if the chief officer of police has reason to believe that the applicant should be prohibited from possessing a firearm, because of "intemperate habits or an unsound mind" or for any other reason which renders the person unsuitable to be entrusted with a firearm.

Persons who have been sentenced to detention for a term of three years or more may not possess a firearm. Unlike in Canada, the disability is permanent and does not require that the offence have been one involving violence. Under Canadian law a certificate must be refused only if the applicant has had such a conviction within the preceding five years.

A certificate in Britain is issued for a maximum of three years, and a further application is then required to renew it. Because a valid certificate is required for lawful possession of a firearm, the gun-owner is effectively required to keep the certificate in force by applying for a renewal whenever it expires. Certificates may also be revoked if the chief officer of police comes to the conclusion that the person concerned should no longer be entrusted with a firearm.

By contrast, the Canadian legislation is much more open-ended. Once a "firearms acquisition certificate" is issued it is valid for five years and can be used to purchase any weapon. It is all that is needed to purchase any firearm which is not a "restricted" weapon. Any number of weapons may be purchased before the certificate expires. Most importantly, the certificate is required only for the acquisition of a firearm. No certificate is required to possess the firearm unless it is a restricted weapon. No matter how long the person remains in possession of the gun, in Canada there will be no review of the circumstances of that possession. Lawful possession continues for life unless a prohibition order is obtained because the owner has given reason to believe that his or her continued possession of a firearm is unsafe.

British firearms certificates are also subject to the applicants showing that they have a "good reason" for acquiring a firearm. In Canada, a firearms acquisition certificate must be issued upon application by a qualified person unless the firearms officer has evidence that a refusal is desirable in the interests of safety.

On the other hand, British shotgun certificates, until the recent amendments, had to be granted and renewed unless the police officer had reason to believe that the applicant was otherwise prohibited from possessing such a weapon, or could not be permitted to possess a shotgun without danger to the public safety. Unlike certificates for other firearms there was no requirement that the applicant demonstrate he or she had a "good reason" for wanting a shotgun. Also unlike other firearms, there were carry-over provisions for shotgun certificates issued under previous Acts. The police may at any time vary the conditions relating to the possession of firearm certificates, but there is still no comparable provision for shotguns.

Any person wishing to carry on the trade of firearms dealer must register with the police, and the chief officer of police for every area must keep a register of such merchants. A new certificate of registration must be applied for each year. The police may impose conditions on the registration of firearms dealers and may at any time vary or revoke such conditions. A person aggrieved by the refusal of registration, or the imposing of conditions, may appeal the decision. Registration may be

refused where there is a court order requiring the refusal, or where a chief police officer is satisfied that the applicant cannot be permitted to carry on as a firearms dealer without danger to public safety. This does not apply, however, to anyone authorized by the Secretary of State to deal in prohibited weapons. Where a registered dealer is convicted of an offence under the Firearms Act, the court may order that the name of the dealer be removed from the register, and that his stock in hand be disposed of by sale.

There is also a requirement that firearms dealers keep a record of all transactions, although this does not apply to air guns and some kinds of ammunition. This register must be kept up to date, and upon demand, must be shown to a police officer. There is an exemption for the manufacture or repair of shotgun components if it appears to the police that the merchant does not manufacture complete shotguns and that it is impossible to assemble a shotgun from the parts likely to come into that person's possession.

As in Canada, law enforcement officers have particular powers regarding search and seizure in order to enforce the Firearms Act.⁽¹⁾ Thus, a constable may stop and search any person whom he has reasonable cause to suspect of having a firearm in a public place, or in a vehicle in a public place, or to be in possession of a firearm with criminal intent in other places, and can oblige him to turn over the weapon for inspection. The constable may also demand production of a firearm or shotgun certificate from any person whom he believes to be in possession of a firearm or ammunition. Furthermore, a police officer with reasonable grounds to suspect that an offence is being committed against the Firearms Act may obtain a warrant to search any premises (police officers in Canada may search premises other than a dwelling-house without a warrant in similar circumstances). The officer may search persons found therein and seize any firearm or ammunition where he has any reasonable grounds to suspect

(1) The Secretary of State may also by order prohibit the movement of firearms from one place to another within the country, to Northern Ireland, or for export from Great Britain, except upon authorization of the local police chief and pursuant to such conditions as he may set.

that it is connected to an offence under the Act. Where the premises are those of a firearms dealer the dealer's records may also be examined.

Police officers also have special powers of arrest in regard to firearms offences. They may arrest without warrant persons found on premises being searched with a warrant if there is reason to believe they may have committed any offence under the Act. The power to arrest without warrant in other cases is limited to certain offences, but for the purpose of such an arrest may enter "any place". Those who fail to produce a firearm or shotgun certificate when properly required must give their name and address. If the officer "suspects" the name or address given to be false (the suspicion need not necessarily be reasonable), or that the person may abscond, the person may be arrested without warrant. In Canada, there are no special powers of arrest related to firearms offences.

A Schedule to the Act sets out the manner of prosecution and the punishment for each offence. Offences regarding firearms certificates carry similar but somewhat stiffer punishments than the comparable offence in Canada - possessing a firearm or ammunition without a certificate can result in a maximum imprisonment of three years (the maximum sentence in Canada is two years) and a fine of up to £2,000 (maximum fines were substantially increased in 1982) or both. Failure to comply with firearm certificate conditions, possessing a shotgun without a certificate or failure to comply with certificate conditions, and trading in firearms without being registered as a dealer, can result in six months imprisonment or a fine of £2,000 or both, although this last offence is also punishable on indictment by up to three years in jail.

Possessing or distributing prohibited weapons or ammunition can result in a sentence of up to five years and a fine, as can shortening the barrel of a shotgun, or converting a fake firearm into a real one (amendments in 1982 made the Act applicable to imitation firearms that can be converted into functioning weapons). Selling a firearm to a person without a certificate or falsifying a certificate can result in a three-year term and a £2,000 fine or both. Up to five years imprisonment is also provided for carrying a loaded firearm in a public place or trespassing with a firearm in a building. The most serious offences -

possession of a firearm with intent to endanger life and use of a firearm to resist arrest - carry maximum terms of life imprisonment; while carrying a firearm while committing or with intent to commit an indictable offence could bring up to 14 years in prison.

Offences involving selling firearms to a person under the age of seventeen can result in imprisonment for up to six months, and any person under fourteen having a firearm in his possession without lawful authority is subject to the same term, and a fine of up to £2,000, as is the person supplying the weapon to him. It is also an offence for a person under the age of fifteen to have an operable shotgun in his possession unless he or she is under the supervision of a person over twenty-one, but this is punishable only by a fine of up to £400. There are also maximum sentences of three months for supplying a firearm to an intoxicated or mentally incompetent person (when the supplier knows or "has reasonable cause for believing" that the person is drunk or of unsound mind) and for failure to hand over a firearm on demand by a constable. Finally, a person convicted of an offence under this Act, or one subject to a probation order specifying that he or she not carry a firearm, may have any firearm or shotgun certificate he or she holds cancelled by the court and the person is obliged to surrender the weapon to the police.

The Firearms Act, 1968 was significantly expanded and toughened in 1988 by the Firearms (Amendment) Act 1988, (c. 45). Not all of the amendments are yet in force, but most of them were proclaimed as of 1 February 1989. The class of prohibited weapons in particular was expanded. These firearms, as previously noted, may only be manufactured, purchased and sold with the authority of the Secretary of State, and private individuals are normally not given permission to possess them.

The most significant addition would appear to be the inclusion on the prohibited list of most semi-automatic rifles and smooth-bore guns (shotguns), as well as those which can be quickly re-loaded with some manual action. In the case of rifles all "self-loading or pump-action" models other than those which take only .22 calibre ammunition have been included. Self-loading and pump-action smooth-bore guns, other than .22 calibre models, are similarly prohibited if they have

a barrel less than 24 inches in length or are less than 40 inches in overall length, excluding folding butt-stocks.

In Canada some of these firearms would be classed as restricted weapons, which must be registered and can be possessed only for certain specific purposes (in the United Kingdom one must have a "good reason" to possess any firearm), but none of them are prohibited. Most could be purchased with an ordinary firearms acquisition certificate. Although there have been calls in Canada for prohibitions on semi-automatic firearms, the government has announced that it will not be taking action on such weapons, except for a proposed prohibition on converted automatic weapons. It is to be noted that the British provision even goes beyond truly semi-automatic firearms, which are "self-loading", and includes "pump-action" models as well.

Also added to the prohibited list were "burst fire" weapons, those which can fire two or more rounds with each trigger pull, certain smooth-bore guns with revolving chambers, rocket launchers, mortars, explosive bullets, and grenades, bombs, rockets and shells designed to be fired from a gun. More importantly, perhaps, it has been recognized that weapons technology means that new types are constantly being introduced, and the Secretary of State has thus been given the power to designate additional prohibited weapons. The Canadian cabinet has had such a power since 1979 but has not, with a few small exceptions, used it in regard to firearms. The British Secretary of State may designate by regulation any firearm or ammunition which appears to him to be "specially dangerous" or undetectable by metal detectors and which was not lawfully on sale in Great Britain in substantial numbers before 1988. Drafts of any such proposed regulations must first be approved by resolutions of both Houses of Parliament.

The provisions regarding shotguns have also been revised. The range of shotguns which are subject to the requirement for a firearm, as opposed to a shotgun certificate, was expanded to include those with bores exceeding 2 inches in diameter, or those with detachable magazines or any magazine capable of holding more than 2 cartridges. At the same time the requirements regarding shotgun certificates have been modified to make

them close to the same as those applicable to all other firearms. Although the onus is different, shotgun certificates must now not be issued if the chief officer of police is satisfied that the applicant does not have a "good reason" for wanting one. "Sporting or competition purposes" and the "shooting of vermin" are specifically listed as good reasons, as well as possession for the purposes of display only.

There are also new provisions for the loan of a shotgun, and restrictions on the sale of shotgun ammunition (a shotgun or firearm certificate must normally be shown). Prohibited weapons which are subjected to conversion remain in the prohibited class, while those firearms which are certified as having been de-activated are exempted from the Act. There are additional provisions regarding the application process for and issuance of firearm and shotgun certificates. Those dealing in firearms, such as auctioneers, carriers and warehousemen, must take security precautions to prevent loss or theft.

While most of the new provisions extend the controls on guns, there are some additional exemptions added as well. Those involved in rifle and pistol clubs may, under specified circumstances, possess firearms and ammunition without holding a firearm certificate, and visitors may now possess firearms under certain circumstances.

There is a provision for the Secretary of State to make payments to people who incur losses because of the surrender or disposal of weapons added to the prohibited list. The Act also provides for the establishment of a "firearms consultative committee", composed of members appointed by the Secretary of State. The committee will allow for input on questions of weapons technology, the possession of and trade in firearms, and the administration and enforcement of the Firearms Acts. Such a committee, involving government representatives and representatives of gun-owners, has been suggested in this country (by the Shooting Federation of Canada), but the intent of the Canadian proposal would appear to be that it would provide for more administrative control of the trade in firearms and further legislative control would then be seen as unnecessary. The British committee, by contrast, would appear to be oriented toward working with the Firearms Acts.

C. The United States

Gun-control legislation was first passed in the United States on the federal level in 1934.⁽¹⁾ The National Firearms Act encompassed both registration and taxation measures designed to regulate to some degree the trade in firearms. Although it was a response to the use of weapons in the violent period of organized crime and gang wars in the 20s and 30s, it was a relatively circumspect law. It established a loose regime of registration and taxation on the manufacture, sale and transfer of short-barreled shotguns and rifles (which could be concealed and thus used by criminals), machine guns (World War I surplus machine guns had been extensively used by mobsters), and silencers.

The Internal Revenue Service was responsible for administering these provisions, and four years later the Service was given an enhanced role by the Federal Firearms Act. This Act (a) obliged importers and manufacturers of firearms and ammunition for handguns to obtain licences from the I.R.S.; (b) made it illegal for a dealer or manufacturer to ship firearms to unlicensed firms in states which required licensing; and (c) made it unlawful to knowingly ship firearms and ammunition to anyone under indictment or convicted of a serious crime.

The assassinations and civil disorders of the 60s resulted in the passage of the Gun Control Act of 1968.⁽²⁾ Given its background⁽³⁾ the Act was rather restrained, although there was much opposition to it.

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- (1) There is also a plethora of State laws and municipal ordinances regulating the sale and possession of firearms. See "State Laws and Published Ordinances Firearms", Dept. of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 17th edition, 1987.
 - (2) Laws of the 90th Congress 2d session, Oct. 22, 1968, Public Law 90-618; provisions of this Act as amended are now to be found in U.S. Code Title 18, Crimes and Criminal Procedure, Chap. 44, "Firearms", ss. 921-928, and Title 26, Internal Revenue Code, Chap. 53, "Machine Guns, Destructive Devices, and Certain Other Firearms", ss. 5801-5881.
 - (3) The House Report cites the Detroit riot of 1967, the civil disorders of April, 1968, the assassinations of President Kennedy, Martin Luther King, Jr., and the killing of 16 people, and the wounding of 31 others, by a deranged sniper firing from a tower at the University of Texas. Senator Robert Kennedy was also assassinated in 1968. Gun-control advocates regarded the Act as a rather "mild" response to all of these events. See Stuart, Peter C., "Gun-Curb Advocates Heartened", Christian Science Monitor, March 11, 1977.

Section 101 of the Act set out its avowed purpose, and it clearly discloses the limited nature of the controls the Act imposed. It is a purpose that has been referred to in subsequent amendments, and remains the overriding limit on the federal approach to the control of firearms -

The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

The Act did not include the much sought-after universal federal registration of all firearms (which does not exist in Canada either). The law did provide for a central firearm registry known as the "National Firearms Registration and Transfer Record", but its scope was quite restricted. Title II of the Act⁽¹⁾ required manufacturers and importers to register each "firearm" produced and imported, and transfers were controlled and recorded. The term "firearm" was defined, however, to cover only the machine guns, concealable rifles and shotguns, and silencers that were the subject of the earlier legislation.

The definition of "firearm" included: (a) short-barrelled (either manufactured as such or "sawed-off" subsequently) shotguns and rifles (barrels of less than 18 and 16 inches respectively, or less than 26 inches in length overall); (b) machine guns (defined as all firearms that shoot, "or (that) can be readily restored to shoot", automatically on a single pull of the trigger, as well as "conversion kits" that could be used

(1) Entitled "Machine Guns, Destructive Devices, and Certain Other Firearms", the successor provisions of which are to be found in the United States Code, Title 26, Internal Revenue Code, Chap. 53.

to turn any firearm into a machinegun, and any parts in the possession of a single person that could be assembled into a functioning weapon); (c) mufflers and other silencing devices; (d) "destructive devices" (which includes bombs, grenades, rockets, missiles, mines and other similar devices); and (e) certain other concealable smooth-bore weapons. It is to be noted that the firearms thus subject to registration and control in the United States are prohibited altogether in Canada.

The vast majority of firearms, including handguns, sporting rifles and shotguns, and semi-automatic assault weapons, were thus not made subject to the registration and control provisions of Title II of the Act; although they were affected by other provisions in Title I, and were subject to applicable state licensing and other requirements.

Title II of the Act also prohibited the importation, except for government, scientific, or research purposes, of the class of firearms covered by that part of the Act. This meant that machineguns, short-barrelled rifles, etc., could no longer be imported into the United States for private sale, but American arms manufacturers could and did continue to produce these weapons, including machineguns in relatively large numbers, and sell them to individuals.

The controls imposed by Title II of the Act on the sale and transfer within the United States of machineguns and other federally registered firearms are on their face fairly restrictive. Not only must the weapon be registered, but each transfer must be recorded in the central registry. More importantly, the Secretary of the Treasury must approve each transfer before the would-be owner may take possession. Furthermore, the application for approval must be accompanied by a photograph and the fingerprints of the purchaser, along with any further identifying information required by regulation.

The requirement that the Secretary approve each sale could mean that such sales would only be allowed in unusual circumstances. In practice, however, anecdotal evidence indicates that sales are routinely approved to anyone who otherwise qualifies to buy a firearm - not an illegal alien, no felony convictions or indictments, no history of drug

abuse, and no commitment for mental illness.⁽¹⁾ Although some commentaries refer to prospective purchasers having to undergo a "rigorous federal background check", it would seem that the primary value of the approval requirement is that a check must be conducted to ensure that the applicant does meet all of the other legal requirements before a transfer can take place. This is often not the case with firearms that do not require federal registration (most firearms other than machineguns, etc.).

While in the context of American gun control laws the purchase of a machine gun may thus be regarded as "difficult", it is permitted by law. In addition, it is alleged that many military-style weapons are imported into the country as semi-automatics, and then (along with semi-automatics produced in the United States) clandestinely converted into automatic weapons.⁽²⁾ Even the purported ban on mail-order sales of such weapons is apparently effectively circumvented by routing the delivery through an in-state licensed gun dealer.⁽³⁾

The Act also required importers (presumably importing registrable firearms for government purposes), manufacturers and dealers in these weapons to register and pay special taxes. There are apparently over 3500 such dealers in the United States. Registered dealers must disclose the address of each location where they do business, and this information must be kept up to date. Manufacturers are also subject to a requirement that the Secretary of the Treasury approve each machinegun, etc. produced, and to a number of record-keeping requirements.

Importers and manufacturers must pay an occupational tax of \$1,000 a year, while the rate for dealers is \$500 per year. More importantly, there is a transfer tax of \$200 payable on each machinegun, etc. which changes hands (as opposed to a \$5 transfer fee for other weapons), and a manufacturing tax of \$200 for each machinegun, etc. produced. Beyond being revenue-producers, these taxes keep the cost of machineguns and the other weapons covered high enough that it may dampen the trade in them.

(1) See e.g., Matthew Maranz, "Guns 'R' Us - So you want to buy a machine gun", The New Republic, Vol. 200, 23 Jan. 1989, pp. 12 and 14.

(2) "The Other Arms Race", Time, February 6, 1989, pp. 20-26 at. p. 22-23.

(3) "Guns 'R' Us".

The cost nonetheless remains within the means of all but the poorest segment of American society. Almost 200,000 legally-registered machineguns were in private hands as of December, 1988.⁽¹⁾

The production, registration and transfer requirements are backed up by provisions making it unlawful: to make or deal in these weapons without being registered; to receive or possess them otherwise than in accordance with the transfer requirements; to be in possession of such a weapon if it is not duly registered in your name in the national registry; to deal in interstate commerce with weapons which have not been registered; or to make false records or interfere with the serial numbers and other identifying marks. Penalties are potentially quite severe, involving a fine of up to \$10,000, or imprisonment for up to 10 years, or both. There are also forfeiture provisions for firearms which are involved in an offence, and the search and seizure powers of the internal revenue laws (usually more extensive than other such powers) are expressly made applicable.

Although its provisions are much less restrictive, Title I of the 1968 Act was perhaps more significant, as it embraced a broader range of firearms. Indeed, some of the more important provisions apply to all firearms.⁽²⁾ Their purpose was to help the states enforce their individual gun control laws more effectively by providing a better licensing system for firearms dealers, and limiting the sale or exchange of firearms to those between federal licensees or transactions within a single state. Title I was an extension of provisions covering handguns which had been included in the earlier Omnibus Crime Control and Safe Streets Act.⁽³⁾ Because of the use of hunting rifles and shotguns in the assassinations and civil disorders referred to earlier, the handgun provisions were extended to these weapons when the Gun Control Act was passed a few months later.

(1) Ibid.

(2) The provisions of Title I are now to be found in United States Code Title 18, Crimes and Criminal Procedure, "Firearms", sections 921 to 928.

(3) Public Law 90-351, 82 Stat. 197, June 19, 1968.

The Congressional Finding that accompanied the gun control section of the Omnibus Crime Control Act cited an inadequately controlled interstate and foreign trade in firearms which made it difficult for states to control firearms within their own borders. It also cited an increase in violent crime because of the ease with which criminals, juveniles, drug addicts, mental defectives, and subversive groups could obtain firearms. Title I does not disclose, however, any apparent federal intention to take over the control of firearms from states whose individual laws imposed little control. Although some of its provisions do impose some requirements on intra-state transactions, most of them are aimed solely at the interstate and foreign commerce in weapons.

It must of course be remembered that it was the federal jurisdiction over such commerce that was the basis for federal legislation in this area. Nonetheless, in other areas such as civil rights the federal government used criminal law powers and methods to remedy the perceived inadequacy of state laws, and no doubt it could have done so in regard to gun control had there been the desire and will to do it.

Title I did impose significant controls on the inter-state traffic in firearms. In doing so it also imposed certain basic requirements on all firearms transactions. Because only those firearms and firearms transactions involving manufacture and sale within the boundaries of a single state can escape the provisions of the Act, it does operate as a basic set of controls, however minimal, on the availability of firearms in all states.

Federal licensing requirements were imposed on anyone engaging in business as an importer, manufacturer, or dealer, or who wished to be a licensed gun collector. The qualifications were minimal. Beyond payment of a fee up to a maximum of \$1,000, the applicant had to be at least 21 years of age; not otherwise forbidden to acquire or be in possession of firearms (no felony convictions, no history of mental illness, etc.); and not in violation of the provisions of the Act itself; was bound to disclose all material information required and could not make any false statement; and had to have a fixed place of business in one of the States.

If the applicant fulfills these basic qualifications a licence must be issued. A refusal to issue a licence, or any revocation of a licence once granted, is subject to administrative and judicial review. The applicant's entitlement to a licence is emphasized by a requirement that the Secretary deal with all applications within 45 days of their being received. Not surprisingly, there are about 275,000 federally licensed gun dealers.⁽¹⁾

These federal licensees were the only ones allowed to ship, transport or receive firearms and ammunition in interstate and foreign commerce. For these purposes "firearm" included any weapon which could shoot a projectile, in other words all firearms except true antiques, plus silencers and "destructive devices" (bombs, grenades, etc.) as well. Parts of firearms were not included, only the "frame" or "receiver" of the weapon. The House Report on the Act noted that former statutory definitions had covered parts, but that this had been found to be "impractical".⁽²⁾ The definition nonetheless included handguns, rifles and shotguns; a minimum level of federal control of all firearms transactions was thus established.

This control took two forms. Allowing only federal licensees to ship, transport, or receive firearms and ammunition in interstate and foreign commerce limited the trade to shipments between licensed dealers. Other provisions prohibited licensed dealers from selling firearms (but not ammunition) to out-of-state residents and further prohibited anyone other than a licensed dealer from transporting a weapon purchased out-of-state into the home state.

(1) See "Why Wait a Week to Kill?", Time, September 26, 1988, p. 24.

(2) One of the aims of the Act was apparently to stop the flow of imported "Saturday night specials", cheap and poorly-made, but nonetheless lethal, handguns. The import controls included in the Act were apparently circumvented by domestic manufacturers, who took over the market by producing cheap handguns using imported parts. More than 1 million such revolvers were produced in the United States in 1970, of which some 600,000 were assembled from imported parts. See Editorial Research Reports, Vol. II 1972, Gun Control: Recurrent Issue (H-35-E35).

The intent was to stop gun-buyers from purchasing outside their home states in order to evade their gun laws. There was an exception allowed for purchases in contiguous states where such a purchase was allowed by the buyer's home state and the sale complied with the conditions applicable in both states. Ammunition could still be purchased out of state, so that hunters and sportsmen who were hunting or engaging in competition in other states could obtain ammunition at the site. Handguns and handgun ammunition could not be sold to those under 21, and rifles and shotguns and ammunition for them to those under 18.

These restrictions effectively prohibited interstate mail-order sales of firearms and ammunition. Even mail-order sales within a state were prohibited unless the buyer first submitted to the seller a sworn statement attesting that he or she was legally entitled to purchase the firearm in question, and providing the name and address of the principal law enforcement officer in the buyer's own locality (presumably so that the information attested to could be checked out by the dealer).

As noted earlier, however, in regard to mail-order sales of machine-guns and other "Title II" weapons, this ban can for practical purposes be evaded by routing the delivery through a licensed dealer in the purchaser's home state. In theory this makes the dealer who delivers the weapon responsible for verifying that the purchaser qualifies under the laws of that state (and under federal law) to acquire the firearm or ammunition, and the intent of the law is thereby accomplished. In practice one suspects that most dealers would be very loath to abort a deal at the point of final delivery by questioning the buyer's qualifications.

In any case the entire system depends on the conscientiousness of gun dealers in verifying that the would-be buyer is legally qualified to acquire the weapon. These qualifications come from two sources, state law and the Gun Control Act itself, and the Act seeks to ensure that the laws of both jurisdictions are honoured. In regard to state law, the Act makes it unlawful for a federally licensed dealer to sell a firearm in violation of any applicable State law or local published ordinance. In order to aid federal licensees the Act requires that all such laws be published by the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, and provided to all licensees.

This requirement that state and local law be honoured is applicable only where the dealer "knows or has reasonable cause to believe" that the sale would violate that law. Except for those few cases where the would-be buyer is known to the dealer, the dealer is dependent on the information submitted by the purchaser. The dealer may be able to gauge certain matters by simple observation, and thus screen out someone who is obviously a minor or whose behaviour is clearly indicative of mental disturbance, but otherwise all that can be reasonably expected of the dealer is that the appropriate questions be asked and the required forms filled out.

The Act imposed its own qualifications on all prospective gun buyers by making it unlawful for a federally licensed dealer to sell a firearm or ammunition to anyone "knowing or having reasonable cause to believe" that the person: is under indictment or is a convicted felon (defined as a crime punishable by imprisonment for more than one year; although convictions for certain commercial crimes, such as anti-trust offences, were exempted); is a fugitive from justice; is an unlawful user of or is addicted to drugs; has been adjudged mentally defective or committed to a mental institution; is an illegal alien or has renounced American citizenship; or has been dishonorably discharged from the Armed Forces. These same persons were forbidden to ship, transport, possess or receive firearms or ammunition in interstate or foreign commerce.

These prohibitions would appear on their face to be effective to keep firearms out of the hands of those groups constituting the greatest danger. The problem is that, like the qualifications imposed by most state laws, they are virtually unenforceable. They translate into little more than questions on a federal form which the dealer must fill out with the purchaser. As with state-imposed requirements, if the would-be buyer simply answers "No" to all of the disqualifying questions, there is little the dealer can do to verify the answers.

It is questionable in any case whether most dealers would be interested in going to any significant lengths to check out the information provided by a prospective purchaser. The literature would appear to indicate that gun dealers in general are strongly opposed to any form of gun control, and it is likely that they can be expected to do only what

they are legally required to do. Nothing in the Act requires anyone to verify that a prospective purchaser is legally qualified to purchase a firearm.

If a dealer, or the police at the behest of a dealer, were inclined to make the attempt to verify the qualifications of a would-be buyer, there would be no opportunity to do so in most cases. Only 22 states and territories have any waiting period between application and handing-over of the firearm, and only three states have a waiting period for other than handguns. These periods vary from 24 hours in Illinois for concealable weapons to six months in New York State for all handguns, but most of them are in the 48 hours to seven days range. Only the much longer periods in states such as New York would allow enough time to do the background check necessary to verify that a prospective purchaser qualified on all counts.

Even if time was available to run background checks, it would seem that most of the necessary information would not be. Evidence of drug abuse or a history of mental illness might be protected by laws regarding the confidentiality of medical information. Criminal records would presumably be available, although it has been said that "there is no master list of convicted felons, (and) no way to make such data quickly and widely available".⁽¹⁾ In any case only a federally-mandated waiting period would fill the gaps created by inconsistent state laws and provide the opportunity on a country-wide basis to do some sort of information check. A proposal to establish a seven-day period under federal law, at least for handguns, was recently defeated in the House of Representatives and appears unlikely to pass in the Senate either.⁽²⁾

(1) "Why Wait a Week to Kill?".

(2) Called the "Brady Bill", after James Brady, the former press secretary for President Reagan who was wounded and left crippled by John Hinckley's assassination attempt on the president, and who along with his wife has lobbied vigorously for the bill. The measure attracted support from many Representatives and Senators, and from many formerly anti-gun control police representatives, but was defeated by the "lobbying muscle" of the National Rifle Association (at a reported cost of \$4 million). See "Why Wait a Week to Kill?", and "Handgun-Control Advocates Keep on Shooting Blanks", Congressional Quarterly, December 2, 1989, pp. 3312-3314.

The federal controls thus come down to an administrative matter of forms and record-keeping. The Act requires that the licensed dealer make a record of the name, age and address of each purchaser and identify the firearm sold by serial number and so on, and the purchaser is enjoined against making any false statement in order to obtain a firearm. Pursuant to all of these requirements the Bureau of Alcohol, Tobacco and Firearms has developed a form that requires all firearms buyers to identify themselves and answer "no" to all of the matters that would disqualify them.

No government official or police officer reviews the completed form or takes any steps to verify the information and answers given. The dealer supervises the filling out of the form and retains the completed form in his or her files. Although it may provide some useful evidence after the fact, if for example a crime is committed with the weapon purchased and the weapon is recovered, it does not provide a meaningful check on those who purchase firearms or on their general availability.⁽¹⁾

Penalties under Title II of the Gun Control Act of 1968 are potentially quite severe. Violations of its provisions or the making of any intentionally false statements or representations in regard to the information required for record-keeping purposes can result in a \$5,000 fine or five years imprisonment, or both. If the offence involves a firearm that the person knew was intended to be used in a further felony a fine of \$10,000 or ten years in jail can be imposed. Actual use of a firearm in a felony leads to a mandatory minimum prison term of one year and a maximum of ten years, with a minimum of five years and a maximum of twenty-five years for repeat offences. In such cases probation and suspended sentences are expressly forbidden. Firearms and ammunition involved in an offence are subject to seizure and forfeiture.

There are exemptions under Title II for armed forces personnel, firearms used by federal, state and municipal officers (not solely by police officers), and in some cases for private employees such as

(1) See "A Nation of Certified Killers", Police Chief Joseph D. McNamara, Harper's Magazine, May 1989, pp. 58-59.

watchmen. Specific provisions also provide different treatment for unserviceable firearms which are imported or sold as curios or museum pieces. In some cases licensed collectors are given the same status to deal in firearms as licensed importers, manufacturers and dealers.

Finally, there are generous provisions for relief from disabilities. For example, the Secretary may grant relief from the prohibition on possession of firearms which the Act imposes on those convicted of felonies, if it is established "to his satisfaction" that the person does not constitute a danger to public safety. Licensed dealers can seek similar relief from the loss of the right to carry on business which is the result of a conviction for breaching the controls applicable to licensees, and they may continue to deal in firearms until their application for relief is finally dealt with.

The Gun Control Act as amended makes those disqualified from possessing firearms in interstate commerce (convicted felons, drug abusers, etc.) liable to a \$5,000 fine, or a jail term of up to 10 years, or both if they are caught dealing in weapons. A significant addition to this penalty was made by the Armed Career Criminal Act of 1984.⁽¹⁾ Those convicted of this offence who have three prior convictions for robbery, burglary or both, face a mandatory minimum sentence of at least fifteen years in prison, and a fine of up to \$25,000.

The National Rifle Association (NRA) fought the relatively minimal controls established by the Gun Control Act, and has continued to lobby for a total repeal of all federal gun control laws. Even the restrictions on the private ownership of machineguns, first established back in 1934, were the subject of its ongoing opposition. The NRA even opposed the banning of armor-piercing bullets, and lobbied against passage of a bill prohibiting "plastic guns."

The NRA's opposition to controls on Teflon-coated ammunition, which can penetrate bulletproof vests, lost it many of its former friends in the ranks of the police, who saw themselves as being among the

(1) See U.S.C. app. s. 1202(a) (Supp. III 1985), appended by Pub. L. No. 98-473, s. 1802, 98 Stat. 2185. Now at 18 U.S.C. s. 924(e)(1) (Supp. IV 1986).

intended victims of this new development in weaponry. It also lost this particular battle, and in 1986⁽¹⁾ Congress made it illegal for anyone to manufacture for domestic purposes (but not to manufacture for export), or import or sell or deliver armor-piercing ammunition. It also enacted heavy penalties for the use of such ammunition in the commission of a felony.

Most recently, the NRA also fought the banning of the so-called "plastic gun", handguns made of materials which are largely undetectable by airport security systems. The NRA's championing of weapons which are primarily of use to terrorists led one former ally, San Jose, California, Chief of Police Joseph McNamara, to ask -

"Cop-killer bullets, mail-order handguns, machine guns... Has the NRA gone off the deep end?"⁽²⁾

While, however, it may have lost the first battle in regard to plastic guns, the NRA may yet win the long-term war. The measure which banned these weapons forbade the Secretary from impairing "the manufacture of prototype firearms or the development of new technology" in making rules and regulations to enforce the ban. What's more, the bill contained a sunset clause, and the ban will thus be automatically extinguished 10 years after it came into force.⁽³⁾

These extensions of the 1968 Gun Control Act are very much the exception to the rule. Scores of other attempts to expand gun controls have met with failure.⁽⁴⁾ The anti-gun control lobby has also succeeded in getting some legislation passed which has cut back on some of the restrictions imposed by the Gun Control Act.

In 1986 Congress passed the Firearms Owners' Protection Act,⁽⁵⁾ which for the most part was exactly what its title would

(1) Pub. L. 99-408, now sections 922(a)(7) and (8), Title 18, Chapter 44, "Firearms."

(2) See "Battle Over the Plastic Gun", Newsweek, June 1, 1987, p. 31.

(3) See the Undetectable Firearms Act of 1988, Pub. L. 100-649, section 2(f)(2)(A), Nov. 10, 1988, 102 Stat. 3816.

(4) See, for example, P. Alward, "The Gun Control Controversy: The Situation in Canada, the United States and Selected Other Countries", Science Division, Research Branch, Library of Parliament, Ottawa, February 1975, pp. 17-18.

(5) Pub. L. 99-308, May 19, 1986, 100 Stat. 449.

indicate. It also contained a few concessions to pro-gun control advocates, although these were overshadowed by a general loosening of the already flimsy structure of the control system.

The extension of gun controls in the 1986 Act included a few small changes such as making it an offence for "anyone," rather than just licensed importers, manufacturers and dealers, to sell a firearm to a convicted felon, drug abuser, etc., and changing the definition of "machinegun" to include any part designed to convert a weapon into a machinegun, rather than confining it to a "combination of parts". The only major change, however, which strengthened gun control involved the trade in machineguns.

A total ban on the sale of machineguns was apparently at one point accepted by the House of Representatives, as a last-minute amendment to a package that was otherwise designed to create a significantly weaker gun control law. This was met with strong opposition (including apparently protests from the film and television industry)⁽¹⁾ and the ban became a closing off of the entry of new machineguns into the market. All machineguns in anyone's lawful possession before the change took effect, including the thousands in the hands of dealers, were made exempt, and can continue to be lawfully traded as well as possessed. The ban on both the sale and possession of machineguns will thus take real effect only at some distant point in the future when most of the automatic weapons presently in private hands (almost 200,000 legally registered as of December, 1988) have rusted away; that is, if the amendment has not been repealed before then. In the meantime, the principal effect of the ban on manufacturing for private sale has been to drive up the price, which may act as some form of control.

The changes made to the Gun Control Act in the interests of firearm owners, particularly in the interests of gun dealers, were considerably more significant. Several of the press reports concentrated on the loosening of the ban on the sale and interstate transport of rifles and shotguns, although this was not the most important change. It applies only to a sale made by a licensed dealer to a person from another state

(1) See "Congress at its worst", The Economist, April 19, 1986, pp. 31-32.

when the buyer appears in person and the sale complies with all applicable state laws. Thus it means that those hunting or engaged in recreational shooting out-of-state can buy guns as well as ammunition at the site, and dealers at shows out-of-state can sell to those attending the show. It does not constitute a lifting of the general ban on interstate firearms transactions.

The more significant changes involved two important areas of regulation: ammunition and record-keeping by dealers. When the original Act was passed the House report declared that - "Licensing of ammunition dealers and maintenance of records of purchases of ammunition are essential to deter individuals intending to act unlawfully..". The original Act thus subjected ammunition to most of the controls applying to firearms. The 1986 amendments removed the references to ammunition from many of those provisions. Thus, for example, the Act no longer requires licensed dealers to verify that all sales of ammunition comply with state laws and local ordinances.

The changes made in 1986 to the provisions regarding the records kept by licensed dealers are perhaps the most significant, in that they do the most to weaken the overall scheme for controlling the sale of firearms. While on one level they simply reduced the record-keeping required of licensed importers, manufacturers, dealers and collectors, the deeper intent would appear to have been to make the records more inaccessible to the agents of the state. The changes prompted San Jose Chief of Police McNamara to complain that "although the bureau (the federal Bureau of Alcohol, Tobacco and Firearms) produces the forms (which all gun-purchasers have to fill out), it is prohibited by law from using the completed forms to determine how many guns are sold and to whom".⁽¹⁾

The original Act provided that dealers' records were to be available for inspection at all reasonable times and were to be submitted to the Secretary of the Treasury if he should so prescribe. Although it is not clear whether the federal bureaucracy ever attempted to use these records to monitor how many guns were being sold and to whom, it is clear that it had the power to do so under the original Act. The 1986 amendments

(1) "A Nation of Certified Killers".

provided that surprise inspections without a warrant would be restricted to once a year, and that the dealer's records were otherwise protected unless the Secretary obtained a warrant in circumstances where there was reason to believe that an offence had been committed.

The records that dealers are required to maintain can thus yield information for the purposes of a particular criminal investigation, but those records cannot be used to monitor the gun trade in general. There is an exception in cases where a gun dealer makes multiple sales of handguns to a single purchaser in the course of five consecutive business days. In such cases a report must be made to the Secretary, but the Secretary is otherwise expressly prohibited from making rules that require any routine reporting or provide the basis for any system of registration (of other than "Title II" firearms - machineguns, etc.).

Other amendments made in 1986 restricted the scope of the circumstances in which a person would be deemed to be engaged in the business of dealing in firearms. More "casual" dealing in weapons is thus now allowed. Although these amendments in themselves should not have made the control of the gun trade that much looser, they may have made illegal activity at the fringes of the trade harder to detect and prosecute, thus significantly weakening the whole system.

The provisions regarding the loss of the right to possess firearms or their seizure, or the revocation of a dealer's licence, have also been weakened. The Secretary's discretion in regard to revocation of licences has been cut back, and it is now easier to challenge the imposition of a disability and obtain relief. The Secretary's discretion in regard to the importing of firearms in certain prescribed circumstances has been eliminated entirely, and if the statutory criteria are met the importation must be permitted.

A provision was also inserted in the Act in 1986 which allows for the interstate transportation of all firearms, including handguns, under certain limited circumstances. Anyone who is not generally prohibited from transporting, shipping or receiving firearms may take "a firearm" from any state where he or she is in lawful possession of it to

any other state where such possession is similarly lawful, but only if the firearm is unloaded and not "readily accessible".

In practical terms this means that both the unloaded gun and any ammunition for it must be locked in the trunk of a car or otherwise secured from ready access by anyone, including the owner. While some press reports appear to suggest that this provision breaches the ban on interstate shipment of firearms, it would actually appear to be a further control on the movement of lawfully-obtained firearms. The gun would have to have been legally purchased in the first place, and the section would not cover the illegal interstate shipment of weapons for the purposes of sale. The effect of the provision is to require hunters and recreational shooters to secure their weapons when crossing state lines.

Federal law which does no more than assist the states to enforce their individual gun controls laws might be all that was necessary if all states maintained a minimum level of controls. The United States is indeed carpeted with state laws and municipal ordinances that impose a wide array of requirements and restrictions on the trade in firearms.⁽¹⁾ The problem, however, is not a mere lack of consistency among state laws. State laws range from restrictions that make it very difficult to obtain firearms to provisions that facilitate gun ownership. The lawful firearms trade that is encouraged in states such as Florida, Virginia, South Carolina and Texas provides an availability of weapons that makes it all but impossible for states with strict gun control laws, such as New York, to enforce their laws and keep out or at least minimize the illegal trade in guns.⁽²⁾

New York State requires all gun purchasers, including those seeking to acquire rifles and shotguns, to obtain a permit. Prohibitions similar to those under federal law prevent convicted felons, those with a history of mental illness or drug abuse, etc. from being issued a permit.

(1) "State Laws and Published Ordinances".

(2) Municipal ordinances display an even greater disparity, although controls at this level have much less impact on the firearms trade. Some municipalities have attempted to ban the possession of handguns altogether, while one city council enacted a bylaw requiring every household to have a handgun available for "protection".

New York law adds some additional criteria - habitual drunkards may not purchase rifles and shotguns, and those adjudged to be not "of good moral character" may be refused a permit to possess a handgun. In both cases the firearms officer has some discretion to decide that a permit should not be issued in the public interest, and in the case of a handgun possession will only be allowed for certain prescribed purposes.

What really sets the New York State law apart is the requirement for a full investigation of the applicant before a permit may be issued. The prospective owner must be fingerprinted and provide photographs, and the law sets out in detail the various steps to be followed in the investigation. It even provides that in the case of a handgun application the records of the state department of mental hygiene must be available to the investigating officer so that the question of the applicant's mental history and present status can be adequately assessed. Substantial waiting periods are provided for so that there will be sufficient time to carry out these investigations - up to 30 days in the case of rifles and shotguns and up to six months in the case of handguns.

New York State law also subjects firearms dealers to heavy licensing, record-keeping, and theft-prevention security requirements; and it is much more difficult to qualify as a dealer under this law than it is under federal law. Despite all of this, New York and other states with strict gun control laws have been largely unable to prevent their citizens from acquiring unlicensed firearms, including weapons subject to strict federal and state registration such as machineguns.

States such as Texas, Virginia and Florida have no waiting periods and no permit requirements, and firearms can be purchased by showing a driver's license as identification. There is apparently a thriving business in interstate gun smuggling. "Gunrunning" is certainly illegal pursuant to both federal, and in many cases, state law. It might be said, however, to have more the status of a "black market" operation, with some degree of social approval. It would appear that many Americans do not view it as being a truly criminal activity.⁽¹⁾

(1) See "Running Guns up the Interstate", Time, February 6, 1989, p. 24, and "Why Wait a Week to Kill?".

In the wake of a number of recent "massacres" involving assault weapons, such as the Stockton, California incident in January of 1989 in which five children were killed and 30 other adults and children wounded in an elementary school playground, a number of states have moved to enact much stricter gun controls. These movements have led many to speculate that the NRA and other anti-gun control advocates may be on the run. A review of developments on both the state and federal level suggests, however, that there is movement in both directions.

While the number of states adopting even looser gun control regimes may be a distinct minority, these developments are nonetheless significant because the disparity between state regimes, which makes the controls in states such as New York more symbolic than real in many cases, appears to be getting broader. Florida is one of the states which is presumed to be the source of much interstate "gunrunning". In 1987 it passed a law that allows anyone 21 years of age who does not have a criminal record or a history of drug or alcohol abuse, and who takes a licensed safety course (some involving only an hour's instruction), to carry a handgun on their person. Concern has been expressed that what has been called the law's "Wyatt Earp loophole" allows pistols to be carried openly, whereas the intent of the law was apparently only to allow people to carry concealed handguns, but otherwise the law appears to enjoy general public support.(1)

What appears to have been at work in Florida is a rising fear of violent crime, which has led many citizens to lose faith in the ability of the state to protect them. Even the "massacres," which have caused many to join the ranks of those advocating more and stricter gun controls, have caused others to rush to the gun shops to acquire weapons to "protect" them from such incidents. In the wake of the Stockton tragedy many California gun dealers quickly sold out of AK-47s.(2)

(1) "A lethal lucky charm", Maclean's, October 12, 1987, pp. 59-60, and "Wyatt Earp Comes to the Sunshine State", Newsweek, October 12, 1987, p. 42.

(2) "The Other Arms Race", pp. 20-21.

Fortunately for those who see Stockton and similar tragedies as reasons to move to more gun control, rather than more guns, the California legislature reacted by enacting a much stronger gun control law. This law bans the sale or transfer, after January 1, 1990, of a long list of named assault weapons, including the most infamous, and popular, ones - the AK-47, Uzi, Colt AR-15, Mac 10 and Mac 11, and many more - and provides a procedure for the Attorney-General or a court to add any other weapons to the list which have similar qualities. The powers given to the courts and the Attorney-General will provide a mechanism to prevent evasion of the law by making cosmetic changes to the design of a banned weapon and marketing it under a new name. The law thus has the advantage of certainty, insofar as certain weapons are specifically named, while avoiding the rigidity which this statutory approach involves and which often renders laws using this technique easy to circumvent.

The California law departs from many other provisions which have banned the further sale of certain weapons in that it applies also to those weapons in private hands before the law came into effect. Even the tough gun control law passed in Canada in 1978 prohibited the further possession of automatic weapons, but "grandfathered" those machineguns which were then part of gun collections, and required that a "firearms acquisition certificate" henceforth be obtained before any firearm could be sold, but did not require that those already in possession of a gun register their weapons and obtain a permit for their retention. The California Roberti-Roos Assault Weapons Control Act of 1989 provides that all assault weapons lawfully possessed before the Act came into effect, but now banned from further sale, must be registered and a permit obtained for their continued possession. Permit conditions permit use of the weapons only at target ranges or shooting clubs.

The banning of semi-automatic "assault" weapons is often opposed on the ground that there is no way of effectively distinguishing between these military-design weapons and semi-automatic rifles and shotguns appropriate for hunting and recreational shooting purposes. The statement of intent that begins the Roberti-Roos Act is thus worth noting. The law is declared to be - "based upon finding that each firearm (banned)

has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings."

The NRA's relentless opposition to gun control not only makes it difficult to get any such law passed, it makes the existence of laws that do somehow get through a legislature continually precarious. The story of the Maryland state law aimed at "Saturday-night specials" illustrates both the growing strength of gun control advocates and the continuing threat to their efforts that the NRA can mount.

In 1988 the Maryland legislature passed a bill to limit the manufacture and sale of cheap handguns. It provided that beginning in 1990 a board with representatives from the police, pro-gun control groups and gun-owners, would be empowered to decide which handguns could continue to be sold. Those caught making or selling guns not on the approved list could be fined up to \$10,000 a weapon. The intent was to prohibit only those weapons for which there appeared to be no "socially useful purpose", but the board clearly has a very broad power to control the availability of all handguns.

Before the law came into effect the NRA was able to collect the required 33,000 signatures to have it made subject to a referendum as part of the November, 1988 elections. The NRA reportedly spent up to \$4 million in the campaign against the bill, outspending the law's supporters 12 to 1 (or spent \$6 million, outspending the opposition by 9 to 1, according to another estimate). The bill was backed by most of the police organizations in the state. Although the law was upheld, the margin was close enough to demonstrate the effectiveness of the NRA's financial and organizational muscle.⁽¹⁾

The intensity of the NRA's fanatical rejection of all gun control laws remains undimmed. Its current president recently affirmed the organization's simple creed -

"I say all guns are good guns. There are no bad guns.

(1) See "On the Ballot: Guns and AIDS - Maryland - The N.R.A. Targets a Tough Law", Time, November 7, 1988, p. 36.

I say the whole nation should be an armed nation.
Period."⁽¹⁾

This single-minded zealousness appears in recent years to have alienated the NRA from the majority of Americans. Polls have regularly shown that at least 70% of Americans favour stronger gun control laws.⁽²⁾ This is not surprising, given the shocking incidents of mass killings and the general rise in violent crime, especially involving random drug-related killings, that have stunned the American consciousness. The NRA's support of armor-piercing ammunition and plastic guns, and the general virulence of its campaigns against laws passed in reaction to incidents such as the Stockton massacre, have also lost it many influential friends, including many police officials.

Much more surprisingly, there is some evidence that the NRA has become out of step with gun-owners as well. A recent poll showed as high a rate of support for more gun control among gun-owners as among the population in general. The poll results were somewhat mixed, as 67% said that they agreed overall with the NRA, and 63% did not believe that stricter gun control laws would reduce violence in the United States. A majority, however, also favoured mandatory registration of all firearms, with the level of support varying from 50% in the case of shotguns to 73% in regard to semi-automatic weapons. Most astounding, 87% favoured a federal law requiring a 7-day waiting period and a background check for anyone wanting to buy a handgun.⁽³⁾

Despite this support, the Brady Bill, which would have imposed a 7-day waiting period, was defeated the first time it came to a vote in Congress; and there appears to be no prospect that it is likely to be brought back in the near future, or would fare any better if it were.⁽⁴⁾ The NRA may have lost the Maryland referendum and the battle

(1) "Under Fire", Time, January 29, 1990, pp. 26 to 29, at p. 26.

(2) For example, "Why Wait a Week to Kill?".

(3) "Under Fire".

(4) "Handgun Control Advocates Keep on Shooting Blanks".

against the California bill banning semiautomatic assault weapons, but the margin in both cases was slim (the California bill passed by one vote).

President Bush has suspended the importation of several semiautomatic assault rifles, including the infamous AK47. Several bills have also been tabled in Congress that would extend the ban to a number of domestic assault rifles and entrench it in law. One such bill would have banned nine semi-automatic assault weapons for three years. Although it was a rather moderate, limited measure, it was considered a significant victory that it was reported out of a full Senate committee by a 7-6 vote (the only gun control measure so reported in 1989; it was never acted on by the full Senate).⁽¹⁾

It remains to be seen whether the Presidential action, and the key vote reversals that led to the Senate committee report, are part of a general shift that will see a bill restricting assault weapons pass Congress. There are also apparently more than 50 state and local gun control bills facing legislatures across the country.⁽²⁾ The next few years may be critical ones for advocates of gun control in the United States.

(1) Ibid.

(2) "Under Fire".

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. The letter is addressed to the Senate and the House of Representatives, and is signed by Abraham Lincoln. The letter discusses the state of the Union and the progress of the war against the Confederacy. It also mentions the recent passage of the Emancipation Proclamation and the President's hopes for a speedy end to the conflict.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. The report is addressed to the President and the Congress, and is signed by Edwin M. Stanton. The report provides a detailed account of the military operations of the Union Army during the previous year. It includes information about the number of troops, the equipment, and the results of the battles. The report also mentions the progress of the war and the President's orders.

3. The third part of the document is a report from the Secretary of the Navy Department, dated January 15, 1862. The report is addressed to the President and the Congress, and is signed by Gideon Welles. The report provides a detailed account of the naval operations of the Union Navy during the previous year. It includes information about the number of ships, the equipment, and the results of the battles. The report also mentions the progress of the war and the President's orders.

4. The fourth part of the document is a report from the Secretary of the Treasury Department, dated January 20, 1862. The report is addressed to the President and the Congress, and is signed by Alexander C. Harris. The report provides a detailed account of the financial operations of the Union Government during the previous year. It includes information about the revenue, the expenditures, and the state of the Treasury. The report also mentions the progress of the war and the President's orders.

5. The fifth part of the document is a report from the Secretary of the Interior Department, dated January 25, 1862. The report is addressed to the President and the Congress, and is signed by Caleb B. Smith. The report provides a detailed account of the land and mineral operations of the Union Government during the previous year. It includes information about the land sales, the mineral operations, and the state of the Interior. The report also mentions the progress of the war and the President's orders.



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